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FEDERAL COMMUNICATIONS COMMISSION
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BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket No. 95-110

Dear Mr. Caton:

Transmitted herewith, on behalf of Carlos J. Colon Ventura, are an original and four copies of his "Reply Comments" in the above-captioned proceeding involving an amendment to the Commission's Rules concerning the automatic stay of certain allocations orders.

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Anne Goodwin Crump
Counsel for
Carlos J. Colon Ventura

Enclosures

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BEFORE THE

ORIGINAL

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of Section 1.420(f))
of the Commission's Rules Concerning)
Automatic Stay of Certain)
Allocations Orders)

MM DOCKET NO. 95-110

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Directed to: The Commission

REPLY COMMENTS

Carlos J. Colon Ventura ("Mr. Colon"), by his attorneys, hereby respectfully submits his Reply Comments with regard to the Commission's *Notice of Proposed Rule Making*, FCC 95-277, released July 21, 1995 ("*NPRM*"), which proposes the amendment of Section 1.420(f) of the Commission's Rules to eliminate the automatic stay of certain allocations orders. With respect thereto, the following is stated:

1. Section 1.420(f) of the Commission's Rules currently provides that if a party files a petition for reconsideration or an application for review of an order amending the FM or TV Table of Allotments to specify that any licensee or permittee will operate on a different channel, the effect of the order is automatically stayed pending resolution of the petition or application. As the Commission recognized in the *NPRM*, this provision can cause unwarranted delay in the provision of new or improved service to the public. Mr. Colon strongly supports elimination of the automatic stay.

2. Two commenters, however, submitted Comments opposing the elimination of the

automatic stay. Roy E. Henderson (“Henderson”) and Sampit Broadcasters (“Sampit”) each oppose the Commission’s proposal on the grounds that the automatic stay provision is needed to protect licensees from the disruption and expense of being forced to make premature changes in their facilities. Sampit cites a few examples of rulemaking proceedings in which a licensee initially was ordered to change to a particular new channel, but on reconsideration either that change was overturned or a different channel was substituted. Henderson and Sampit argue that the disruption that could be caused outweighs the benefits of earlier institution of improved service.

3. What Henderson and Sampit apparently overlook, however, is the fact that the elimination of the automatic stay provision does not mean that no stay will be available. On the contrary, licensees submitting meritorious petitions for reconsideration or applications for review of an action in a rule making proceeding still would be able to submit a motion for stay. In appropriate circumstances, the Commission could then grant the requested stay, preserving the *status quo* until it reached a decision on the merits.

4. Henderson acknowledges the Commission’s statement in the *NPRM* that only a very small percentage of appeals of forced channel changes are successful. Henderson argues, however, that the disruption that would be caused to this small group of licensees and their listeners would be so great as to constitute an irreparable injury requiring a stay. Mr. Colon does not contest that circumstances may occasionally arise in which a licensee and the listening public would suffer harm if the licensee were forced to make an ill-considered change in its channel only to have the channel changed back on reconsideration or review. In such rare cases, a stay may be appropriate. That remedy will remain open to licensees, even if the Commission

eliminates the automatic stay. Licensees simply will be required to submit a request for a stay. The Commission can then consider whether a stay is appropriate in a particular proceeding, granting stays when warranted and denying them when petitions for reconsideration or applications for review are meritless.

5. If the Commission does not eliminate the automatic stay, competitors will continue to attempt to delay new or improved service in their markets by submitting petitions for reconsideration and applications for review without regard to the merits of their appeals. The Commission has noted the large percentage of such petitions for reconsideration and applications for review which are without merit and are ultimately unsuccessful. The very filing of such petitions and applications burdens the Commission's resources and delays improvements in service to the public.

6. Mr. Colon can personally attest to the difficulties caused by the automatic stay rule. Mr. Colon is the licensee of Station WSAN(FM), Vieques, Puerto Rico. He has been attempting to obtain a modification of his license to specify a new community of license and change transmitter sites for five and one-half years. Mr. Colon sought these changes through a rule making proceeding. A decision was finally reached in this proceeding when a *Report and Order*, DA 95-1323, was released on June 22, 1995.

7. The changes adopted in the *Report and Order* will allow at least two communities to have their first local aural transmission service, one community to be allotted either its first or second local aural transmission service, and allow another station to improve its service and eliminate a short-spacing. Further, the proposed modification of WSAN(FM) will allow it to serve 1,301,685 additional people, which represents an increase of 634 percent.

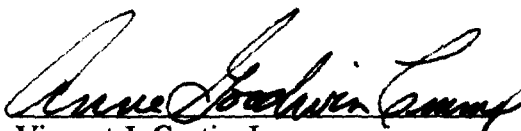
8. All of these public interest benefits will now be substantially delayed, however, and WSAN(FM) may well be forced to go off the air in the interim. The licensees of two stations ordered to change channels in order to accommodate the modifications made to the Table of Allotments have filed petitions for reconsideration of the *Report and Order*. Therefore, pursuant to the current Section 1.420(f) of the Rules, the effective date of the new channel and community of license for WSAN(FM)'s facilities was automatically stayed. This delay is likely to cause the station to go dark.

9. Mr. Colon operates WSAN(FM) from its current transmitter site pursuant to a special use permit issued by the U.S. Department of the Interior Fish and Wildlife Service. Mr. Colon's current permit will expire on September 30, 1995, and will not be renewed. All property owned by the licensee must be removed from the site by November 30, 1995. With the automatic stay in place, however, Mr. Colon cannot obtain a construction permit for his new facilities and relocate his station. As the result, many people are likely to lose a broadcast service, and first local service and improved service will be denied to many more. Obviously, this result does not serve the public interest. Accordingly, Mr. Colon strongly supports the Commission's proposal to eliminate the automatic stay provision. Further, as set forth in his Comments in this proceeding, Mr. Colon additionally urges that the Commission further modify Section 1.420(f) to provide that no petitions for reconsideration may be filed concerning orders modifying the FM and TV Table of Allotments. Rather, parties should be limited to moving forward with an application for review.

WHEREFORE, the premises considered, Mr. Colon hereby urges the Commission to amend its Rules to eliminate the automatic stay as proposed in the *NPRM* and further to provide that no petitions for reconsideration may be filed in FM and TV allotment proceedings.

Respectfully submitted,

CARLOS J. COLON VENTURA

By: 
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September 12, 1995

CERTIFICATE OF SERVICE

I, Mary A. Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Reply Comments" were sent this 12th day of September, 1995, by first-class United States mail, postage prepaid, to the following:

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